

SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT ("SAIDS")

ANTI DOPING DISCIPLINARY COMMITTEE

ATHLETE: Mr Kyle Noonan

SPORTS FEDERATION: South African Power Lifting Federation

DATE: 7 September 2016

PLACE OF HEARING: Rosebank Holiday Inn, Oxford Road, Johannesburg

INDEPENDENT DOPING HEARING PANEL ("Panel"):

Ms Corinne Berg (Chairperson)

Dr Andy Branfield (Medical Representative)

Prof. Yoga Coopoo (Sport Administrator Representative)

PROSECUTOR: Mr Michael Murphy

ANTI-DOPING RULE VIOLATION: Anti-doping rule violation in terms of Article 2.1 of the SAIDS Anti-Doping Rules.

RULING

1. COMPOSITION OF PANEL

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended in 2006). SAIDS formally accepted the World Anti-Doping Agency (“WADA”) code in 2005. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation. These proceedings are governed by the 2015 SAIDS Anti-Doping Rules (“the Rules”).

This SAIDS Independent Doping Hearing Panel (“the Panel”) has been appointed in accordance with Article 8 of the Rules, to adjudicate and to ascertain whether or not the Athlete has violated the said Rules, and if so, to determine the sanction applicable.

2. PROCEDURAL MATTERS

The Athlete attended the hearing held on 7 September 2016, without any legal representation. The athlete did not deny that the presence of the prohibited substance in his urine sample collected on 19 March 2016, and tested by the Anti-Doping Laboratory in Qatar.

3. THE CHARGE

The charge against the Athlete was set out in a letter, dated 7 July 2016, addressed to the Athlete. The letter sets out, in paragraph 3, that the analytical report received from the Laboratory confirmed the presence of the prohibited substance, Tamoxifene 3-hydroxy 4-methoxymetabolite, a metabolite of Tamoxifen, in the Athlete’s Sample A urine sample (sample number 3980695). The Athlete elected not to have his Sample B tested.

4. EVIDENCE OF THE ATHLETE

- 4.1 The Athlete was satisfied with the Doping Control Officer and the process followed on the day of sample collection. He also confirmed that he was satisfied that with the chain of custody.

- 4.2 The Athlete did not deny the presence of Tamoxifene 3-hydroxy 4-methoxymetabolite, a metabolite of Tamoxifen in his Sample A, and accordingly, admitted guilt to the doping charge.
- 4.2.1 The Athlete handed up a doctor's script, signed by Dr. G. J du Plessis, a general practitioner, and dated 18 February 2016, a month before the competition. The doctor prescribed 4 (four) medications for the Athlete, 2 (two) of which were prescribed for the Athlete's thyroid. The prohibited substance, Tamoxifen is an ingredient in the medication, Kessar, which is used for treatment of breast cancer, and which was prescribed by the doctor. According to the Athlete, the medication Kessar was prescribed to him because he had a swollen nipple, which the doctor was concerned about.
- 4.2.2 The Athlete was able to advise the Panel how the prohibited substance entered his system and explained why the medication, which contained the prohibited substance, was not used to enhance his performance.
- 4.2.3 The Athlete said that he had used supplements in the past, but he was tested before, in competition, and no prohibited substances were found in his urine samples.
- 4.2.4 Although he admitted that he ingested the medication and therefore, admitted that the prohibited substance was found in his urine sample, and that he therefore, admits that he is guilty of a doping offence, the Athlete said that he did not use the medication which contained the prohibited substance intentionally, and not to enhance his performance.
- 4.2.5 The Athlete agreed with SAIDS and the Panel Members that he should have advised his doctor that he had a competition a month later and he should have been more careful.
- 4.2.6 The Athlete referred to the following Rules in support of his request for the reduction of his sanction:-

10.2.2;

10.4;

10.5.1;

10.6.4

5. EVIDENCE OF THE SAIDS PROSECUTOR, MR MURPHY

- 5.1 Mr Murphy confirmed that the Athlete promptly admitted that the prohibited substance was present in his urine sample, which was tested by the accredited Laboratory in Qatar.
- 5.2 He stated that the sanction period may be reduced in terms of Article 10.2.2 from 4 (four) to 2 (two) years as Article 10.2.1 is not applicable in this case due to the fact that the prohibited substance is a specified substance and due to the fact that the Athlete did not act with intent. However, he said that the Athlete's sanction should not be further reduced in terms of Articles 10.4 or 10.5.1 as the Athlete still acted negligently and recklessly in that he failed to take the necessary precautions to prevent any prohibited substances from entering his body. Mr Murphy referred to the Court of Arbitration for Sport ("CAS") Porter Case, in support of his submission that the Athlete's sanction should not be reduced further in terms of Articles 10.4 and 10.5.1.
- 5.3 Mr Murphy pointed out that Article 10.6.4 was not relevant to this particular case and therefore, the Athlete cannot rely on it for further reduction of his sanction.
- 5.4 Mr Murphy stated that the onus is on the athlete to prove that there was no significant fault or negligence on his part and that the test is a strict one.
- 5.5 Mr Murphy also stated that SAIDS did not find the presence of any other prohibited substances in the Athlete's urine and that SAIDS was unable to prove

that the Athlete ingested other supplements which contained additional prohibited substances.

- 5.6 He said that all the Athlete's results should be disqualified from date of sample collection.

6. APPLICABLE RULES

- 6.1 Article 2.1 provides as follows:-

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following:

presence of a prohibited substance or its metabolites or markers in the Athlete's A Sample ...

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the prohibited list, the presence of any quantity of a prohibited substance or its metabolites or markers in an athlete's sample shall constitute an anti-doping rule violation

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.”

6.2 Article 3 reads as follows:-

“3.1 Burdens and Standards of Proof

SAIDS shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation, which is made.

This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 ...

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted sample analysis and custodial procedures in accordance with the international standard for laboratories.

The athlete or other person may rebut this presumption by establishing that a departure from the International Standard for

Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the international standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then SAIDS shall have the burden to establish that such departure did not cause the adverse analytical finding.

3.2.3 ...

3.2.4 ...

3.2.5 *The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the athlete or other person who is asserted to have committed an anti-doping rule violation based on the athlete's or other person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or SAIDS. (The emphasis is added)."*

6.3 Applicable provisions of Article 10 of the Rules read as follows:

"10.2.1 The period of Ineligibility shall be four (4) years where:-

10.2.1.1 The anti-doping rule violation does not involve a specified substance, unless the athlete or other person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a specified substance and SAIDS can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two (2) years.

10.2.3 As set out in Article 10.2.3 of the Anti-Doping Rules 2015, the term “intentional” is meant to identify those athletes who cheat. The term, therefore, requires that the athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation, and manifestly disregarded that risk;

10.4 *Elimination of Period of Ineligibility where there is No Fault or Negligence*

If an Athlete or other Person establishes in an individual case that he or she bears no significant fault or negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5.1 *Reduction of Sanctions for Specified Substances of Contaminated Products for Violations of Article 2.1, 2.1 or 2.6*

10.5.1.1 *Specified Substances*

Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility and at a maximum of 2 (two) years Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.

10.10.2 *Timely Admission*

Where an Athlete or other Person promptly (which, in all events, for and Athlete means before the Athlete competes again) admits that anti-doping rule violation after being confronted with the anti-doping rule violation by SAIDS, the period of ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation occurred...

10.10.3.1 *Credit for Provisional Suspension or Period of Ineligibility*

*If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person **shall** receive a credit for such period of Provisional Suspension against any period of Ineligibility, which may ultimately be imposed..."*

6. FINDING ON THE CHARGE

The Panel Members have determined that the Athlete is in fact guilty of the charge set out in paragraph 3 above.

7. SANCTION

7.1 The Athlete ingested the substance Tamoxifene 3-hydroxy 4-methoxymetabolite, a metabolite of Tamoxifen, which is a Specified Substance.

7.2 Administrative action must be lawful, reasonable, and procedurally fair. For the Panel to be in a position to consider a reduction would require that the athlete in question to explain how the prohibited substance entered his body, that the prohibited substance was not used to enhance his performance and to establish that there was not intent.

7.3 The Athlete was provisionally suspended from the date of communication of the Athlete's analytical finding, being the 7th of July 2016.

7.4 SAIDS charged the Athlete In terms of Article 2.1 and in accordance with Article 10.2.1, the period of ineligibility should be 4 (four) years.


7.5 Article 10.2.2 allows for the reduction referred to in Article 10.2.1 to be reduced from 4 (four) years to 2 (two) years if Article 10.2.1 is not applicable.

8. CONCLUSION

8.1 The Athlete presented his case and provided mitigating factors as to why he believes his sanction should be reduced in terms of Article 10.2.2, and reduced further in terms of Article 10.4 and 10.5.1.

- 8.2 The Athlete was able to explain how the prohibited substance entered his body and he further explained that the prohibited substance ingested was not used intentionally and was not used for purposes of enhancing his performance.
- 8.3 The Athlete promptly admitted guilt and he complied with SAIDS. The athlete also prepared well and presented his case to the Panel Members at the Anti-Doping hearing.
- 8.4 The Athlete has been tested by SAIDS in the past. This is the Athlete's first doping offence.
- 8.5 Although the Athlete may not have acted with intent, Articles 10.4 and 10.5 cannot be applied as the Athlete did not comply with Article 2.2.1 and therefore, was negligent in ingesting the prohibited substance.
- 8.6 The Panel Members have deliberated and have come to the conclusion that the period of ineligibility will be **2 (two) years, from date of sample collection**, and not 4 (four) years. Articles 10.2.2 and 10.10.2 are applicable in this particular case. The period of ineligibility will accordingly, commence from **19 March 2016** and will come to an end on **18 March 2018**.
- 8.7 In terms of Article 10.10.3.1, the Athlete should be credited for the period of provisional suspension which commenced on **7 July 2016**.
- 8.8 In terms of Article 10.8 the Athlete's results achieved in the event (and any subsequent events from sample collection and before his suspension) shall be disqualified and all medals and prizes, if any, shall be forfeited.
- 8.9 The Athlete's sanction will be published in terms of Rule 14.3.

Dated at JOHANNESBURG on 12 September 2016.



Corinne Berg (Chairperson)

For and on behalf of the Panel Members:

Mr Andy Branfield and Mr Yoga Coopoo